UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ANTHONY AGOSTINELLI,	)
Plaintiff,	) **Civil Action No.**
v.	) 05 CV 6586(JSCF)
OFFICER WILLIAM CONNELL IV, VILLAGE OF EAST ROCHESTER, & VILLAGE OF EAST ROCHESTER POLICE DEPARTMENT,	)
Defendants.	)

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WESTERN DISTRICT OF NEW...

Plaintiff, **ANTHONY AGOSTINELLI,** by his attorney CHRISTINA A. AGOLA, ESQ., as and for his complaint against the Defendants, alleges:

JURY TRIAL DEMANDED

1. Plaintiff demands a jury to try all claims triable by a jury.

PRELIMINARY STATEMENT

2. This is a 42 U.S.C. § 1983 action for violation of Plaintiff's Fourth Amendment rights.

3. Plaintiff seeks declaratory injunctive and equitable relief; compensatory and punitive damages; costs and attorney fees for the deprivation of his Fourth

Amendment constitutional rights under 42 U.S.C. § 1983.

JURISDICTION AND VENUE

4. Plaintiffs bring this action to recover damages for the violation of his civil rights under 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3), and the United States Constitution Amendment Four, and Amendment Fourteen.

5. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1332 (federal question) and § 1343 (civil rights)

6. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. §§ 2201 & 2202.

7. Compensatory and punitive damages are sought pursuant to 42 U.S.C. § 1983.

8. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 1988 and Fed R Civ. P. Rule 54.

9. As mandated by the Supremacy Clause in relation to actions brought pursuant to 42 U.S.C. § 1983, Plaintiffs herein do not have to comply with Municipal Law Section 50-e with regard to filing a Notice of Claim with regard to federal claims, and thus with regard to each federal cause of action stated Plaintiff did not file a Notice of Claim prior to filing this matter. A Notice of Claim with reference to

the state claims was duly served upon the defendants, and Plaintiff reserves the right to amend his complaint to add those state claims after defendant has had an opportunity to take Plaintiff's testimony at a 50(h) hearing.

10. This action properly lies in the Western District of New York, pursuant to 28 U.S.C. § 1391(b)(2) because the claim arose in this judicial district, and the Defendant resides and or does business in Monroe County.

PARTIES

11. At all times herein mentioned, plaintiff ANTHONY AGOSTINELLI was and is a minor child and a resident of the Village of East Rochester.

12. At all times herein mentioned, defendant OFFICER WILLIAM CONNELL IV acting in his official capacity was a Police Officer employed by defendant VILLAGE OF EAST ROCHESTER, and is a person within the meaning of 28 U.S.C. § 1983.

13. At all times herein mentioned, defendant VILLAGE OF EAST ROCHESTER was and is a Municipal Corporation duly organized and existing under the laws of the State of New York, and is a person within the meaning of 28 U.S.C. § 1983.

FACTUAL SUMMARY

14. On October 25, 2005, in the premises commonly known as the Police Department for the Village of East Rochester, the Plaintiff, a child aged 17 who suffers from Attention Deficit Disorder ("ADD"), was present with several witnesses.

15. Plaintiff was not under arrest, nor under custody, but Officer Connell IV threatened to arrest Claimant for no apparent reason. As Plaintiff attempted to walk away, Officer Connell IV, seemingly out of control, then inappropriately, violently and without provocation, grabbed Plaintiff's jacket, thrusting his head backward into a wall in front of several witnesses, leaving a dent in the drywall which was subsequently and immediately repaired by the Village of East Rochester.

16. Claimant was then placed under arrest by Officer Connell IV, placed in handcuffs, and thrust into a holding cell. One half hour later, Connell returned and let Claimant out of the cell, informing Claimant that he was *not* under arrest, thereby having unlawfully and unnecessarily confined Claimant against his will.

17. The Plaintiff was aware that Officer Connell IV was to inflict this imminent harm upon his body when he rammed his head into the wall, and was terrified by Officer Connell IV's tenor and his conduct.

18. The Claimant could not attend school the next day due to severe headache, for which he has sought medical care.

19. Plaintiff's mother was told by a East Rochester Police Officer that a video of the event is in

existence, and that it "could go either way."

COUNT I
OFFICER CONNELL IV'S §1983 VIOLATION FOR USE OF EXCESSIVE FORCE AGAINST AGOSTINELLI

20. On or about October , 2005, Officer Connell illegally used excessive unreasonable force under the circumstances against Agostinelli in violation of Agostinelli's Fourth Amendment right to be secure in his person.

21. During questioning by Officer Connell, during which time Agonstinelli was neither in custody nor under arrest, Connell grabbed Agostinelli by his jacket and slammed him into the wall, forcing his head to slam into the wall and causing his head to break the drywall behind him. Agostinelli is a seventeen year old child who suffers from Attention Deficit Disorder and did nothing to provoke Connell. Officer Connell's conduct under the circumstances was an excessive use of force and a violation of East Rochester Police Department policy; a reasonable police officer in Connell's position would not have used such force against a minor child.

22. The excessive force used by Officer Connell caused Agostinelli, an upstanding citizen of the United States, to suffer a violation of his Fourth Amendment right to be secure in his person.

23. In addition, the excessive force by Officer Connell caused Agostinelli to suffer severe pain to his head, neck and back and to suffer extreme embarrassment, anxiety and emotional strain.

24. That the aforementioned misuse of authority and power by defendant William Connell, IV was egregious and shocking to the conscience. As a direct result, plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to unlawful excessive force described, against his will, and was caused, and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

25. Such deprivations were in violation of the rights secured to plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

26. As a result of defendant William Connell IV's deprivation of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial .

27. That plaintiffs demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT II
OFFICER WILLIAM CONNELL'S §1983 VIOLATION FOR ILLEGAL SEIZURE OF THE PLAINTIFF'S PERSON

28. On or about October 2005, Officer Connell illegally seized Plaintiff's person without probable cause or reasonable suspicion in violation of the Fourth Amendment of the United States Constitution.

29. Officer Connell was acting under the color of state law when he, without probable cause or reasonable suspicion, exercised his authority as a police officer to imprison Agostinelli for close to an hour.

30. Agostinelli was not free to leave by Officer Connell's show of authority and was therefore seized within the meaning of the Fourth Amendment.

31. By illegally seizing Agostinelli, Officer Connell caused Agnostinelli, an upstanding citizen for the United States, to suffer a violation of his Fourth Amendment right to be secure in his person.

32. That the aforementioned misuse of authority and power by defendant William Connell, IV was egregious and shocking to the conscience. As a direct result, plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to unlawful confinement described above, against his will, and was caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

33. Such deprivations were in violation of the rights secured to plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

34. As a result of defendant William Connell IV's deprivation of Plaintiff civil rights, Plaintiff has been damaged in an amount to be determined at trial.

35. That plaintiffs demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT III
THE VILLAGE OF EAST ROCHESTER'S §1983 VIOLATION FOR ILLEGAL SEIZURE OF THE PLAINTIFF'S PERSON

36. The Village of East Rochester caused Agostinelli to be subjected to the Fourth Amendment violations (illegal seizure and excessive force) because Officer Connell IV's actions were part of the customary practices of the Village of East Rochester police department.

37. Officer Connell has recently (within the past year of 2005) been the subject of two Notices of Claim regarding the intentional use of excessive force, and the subject of a pending federal lawsuit claiming that he assaulted a 47 year old female in or about October of 2004 by body slamming her to the ground in front of several witnesses, and that he applied a stun gun to yet another female's breast and vaginal area several weeks later, and further attempted to run his patrol car into the oncoming car of the Plaintiff in that matter. Further, the Village of East Rochester has been subject to a Notice of Claim for unlawful imprisonment of a male, and another federal lawsuit for unlawful harassment by witnesses to the pending federal lawsuit filed earlier in the year of 2005; the allegations of that

complaint assert that William Connell IV attempted to use his car as a deadly weapon against each the Plaintiff of the original lawsuit and her sister on two consecutive days. Such repeated Fourth Amendment violations amount to the Village of East Rochester's deliberate indifference to an obvious need for training of its officers, including and especially, Officer William Connell IV. This failure to adequately train resulted in Officer Connell's actions that caused the Plaintiff's harm, and will continue to do so if nothing is done by the Village of East Rochester to abate Officer Connell's conduct and the harm to the public at large.

38. That the aforementioned misuse of authority and power by defendant William Connell IV was egregious and shocking to the conscience. As a direct result, plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to engage in the physical contact and unlawful confinement described, against her will; and was caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

39. Such deprivations were in violation of the rights secured to plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

40. As a result of defendant William Connell's deprivation of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.

41. That plaintiffs demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiffs request the following relief:

1. That this Court grant final judgment against defendants, jointly and severally, as and for plaintiff in the sum to be determined to by a Jury for compensatory damages and the sum to be determined by a Jury for punitive damages.

2. That this Court grant final judgment in favor of plaintiffs for all costs and disbursements of this action together with reasonable attorneys fees pursuant to by 42 U.S.C. § 1988.

3. That this Court grant such other and further relief as the Court deems just and proper.

DATED: NOVEMBER 1, 2005
ROCHESTER, NEW YORK

BY:

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